The State Bar of California

Task Force on Access Through Innovation of Legal Services

To: ATILS Task Force
From: Andrew Arruda
Date: October 7, 2019
Re: D.3. Recommendation 1.1: The models being proposed would include individuals and entities working for profit and would not be limited to not for profits.

Recommendation 1.1 has received a total of approx. 116 comments, 102 in opposition, 82 in support, and 9 with no stated.

Recommendation 1.1 (Models Include For Profit Entities & Individuals) [ABS/MDP]	
Recurring Point	Possible Response
Attorneys charge too much for simple paperwork and simple legal advice [NOTE: this comment is in support.]	U.S. Census data suggests that there are segments of the people-law sector that are presently underserved by traditional law firm providers. The cost of traditional services appears to be a main factor. These consumers might benefit from the provision of limited, specified legal services rendered by regulated nonlawyer providers. Prof. Stephen Gillers submitted comment to ATILS that: "For example, in Washington State, LLLTs charge substantially less than lawyers for the services they are authorized to perform, about $60 to $120 hourly according to a 2018 article in the Seattle Times quoting a Washington State Bar officer.
Enabling non-attorneys to practice law wouldn't address the lack of access to justice problem, but would exacerbate the problem of faulty advice from non-attorneys.	U.S. Census data suggests that there are segments of the people-law sector that are presently underserved by traditional law firm providers. The cost of traditional services appears to be a main factor. These consumers might benefit from the provision of limited, specified legal services rendered by regulated nonlawyer providers. Prof. Stephen Gillers submitted comment to ATILS that: "For example, in Washington State, LLLTs charge substantially less than lawyers for the services they are authorized to perform, about $60 to $120 hourly according to a 2018 article in the Seattle Times quoting a Washington State Bar officer.

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	In the case individual nonlawyer providers, imposing robust eligibility requirements can help address competence issues. In Washington State, for example, among the eligibility requirements to be a LLLT are: 45 hours of paralegal studies; 15 hours of family-law-specific course work from a law school, ABA approved paralegal program, or LLLT Board; and 3,000 hours of law–related work experienced supervised by an attorney. In general, proactive risk-based regulation of the competence of nonlawyer providers that relies on auditing and monitoring rather than complaint-driven enforcement may mitigate or prevent consumer harm.
Law school weeds out people who are unfit to offer legal advice.	In the case individual nonlawyer providers, imposing robust eligibility requirements can address this issue. In Washington State, for example, among the eligibility requirements to be a LLLT are: 45 hours of paralegal studies; 15 hours of family-law-specific course work from a law school, ABA approved paralegal program, or LLLT Board; and 3,000 hours of law–related work experienced supervised by an attorney. In the case of ABS, in other jurisdictions, imposition of regulatory restraints on the entity itself and key nonlawyer personnel are used. As examples, this includes requirements for lawyer majority ownership of ABS law practices (ABS in Italy) and fitness to own scrutiny for ABS nonlawyers (in the U.K.).
The real problem is the lack of capacity of the courts and the ability of the courts to develop self-help projects to serve a wider public. Authorizing a flood of non-attorney legal practitioners would simply further clog an already badly overstrained system.	The Task Force was given a specific charge to study AI, technology and online delivery systems with the dual goals of increased access to legal services and public protection. A list of other potential different initiatives (i.e., not technology-driven initiatives) will be compiled as an appendix to the Task Force's final report. Court reform and increasing court-connected self-help projects will be included in this list.

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Using “legal technicians” to try to help consumers in this state, turns the practice of law into a "Legal Zoom," "Court Buddy," or some other catchy website name and interface or an 800 phone number that poorly trained, unsupervised "non-lawyers" answer 24/7. After which, consumers will be under the mistaken belief that they don't need a live attorney, because they are getting "certified" "legal assistance" when really they are getting computer-generated forms. This will result in more consumers losing their cases and possibly having their wages garnished and a lien against their homes for the other side's costs and perhaps attorney's fees.	U.S. Census data suggests that there are segments of the people-law sector that are presently underserved by traditional law firm providers. The cost of traditional services appears to be a main factor. These consumers might benefit from the provision of limited, specified legal services rendered by regulated nonlawyer providers. Prof. Stephen Gillers submitted comment to ATILS that: “For example, in Washington State, LLLTs charge substantially less than lawyers for the services they are authorized to perform, about $60 to $120 hourly according to a 2018 article in the Seattle Times quoting a Washington State Bar officer. In the case individual nonlawyer providers, imposing robust eligibility requirements can help address competence issues. In Washington State, for example, among the eligibility requirements to be a LLLT are: 45 hours of paralegal studies; 15 hours of family-law-specific course work from a law school, ABA approved paralegal program, or LLLT Board; and 3,000 hours of law–related work experienced supervised by an attorney. In general, proactive risk-based regulation of the competence of nonlawyer providers that relies on auditing and monitoring rather than complaint-driven enforcement may mitigate or prevent consumer harm.
This proposal is premised on the idea that for profit tech companies, tech venture capitalist and other non-lawyer investors are the answer to protecting the public access to justice, particularly with respect to underserved and vulnerable populations. But that has not been proven nor shown. Greater study is needed. To date the most extensive empirical investigation on the effects of NLOs on access to justice was published by Nick Robinson, a research fellow at Harvard’s Centre on the Legal Profession. After an	The experience of other jurisdictions is helpful but ultimately not determinative of how California might approach similar reform activities. For example, the U.K. has had ABS for several years but only recently is making a concerted effort to optimize use of technology. (See the “Legal Access Challenge” of SRA Innovate at: https://www.sra.org.uk/solicitors/resources/innovate/sra-innovate/ .)

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extensive review of the literature, field visits in the UK and Australia and interviews with lawyers and officials in both jurisdictions, Robinson concluded that NLOs in Australia made few inroads in anything but the personal injury, consumer, social welfare (disability) and mental health (malpractice) fields. In those countries NLOs like Slater & Gordon earned very little market share in family law, landlord tenant or criminal law work. Based on the data, Robinson concluded that NLO investment in personal injury was largely driven by higher expected returns and not as much on access needs.	
Anecdotal evidence throughout the profession is uniform that when a client uses a company like LegalZoom for a business solution, the product very often causes more problems than it solves and hurts the legal position of the client. Actual attorneys then have to solve the problems caused by the less-than-rigorous advice from LegalZoom and similar providers if they can—at great expense and risk to the client.	In general, proactive risk-based regulation of the competence of nonlawyer providers that relies on auditing and monitoring rather than complaint-driven enforcement may mitigate or prevent consumer harm. In the case individual nonlawyer providers, imposing robust eligibility requirements can help address competence issues. In Washington State, for example, among the eligibility requirements to be a LLLT are: 45 hours of paralegal studies; 15 hours of family-law-specific course work from a law school, ABA approved paralegal program, or LLLT Board; and 3,000 hours of law–related work experienced supervised by an attorney.

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There is no guarantee that companies will prioritize those in need of legal services over profit.	Notwithstanding any reforms to permit ABS or fee sharing, a lawyer would remain bound by the duty of competence, the duty to supervise nonlawyers and the conflicts of interest restrictions. Proactive risk-based regulation of nonlawyer providers that relies on auditing and monitoring rather than complaint-driven enforcement would seek to minimize or prevent consumer harm. In other jurisdictions, regulatory restraints are used to avoid impairing client protection. As examples, this includes requirements for lawyer majority ownership of law practices (ABS in Italy) and fitness to own scrutiny for nonlawyers (in the U.K.).
None of the for-profit entities offer any of the important safeguards that local bars provide the public. (Making sure the atty is not being disciplined, malpractice insurance verification, subject matter expertise, providing equal number or referrals to all qualified atty, etc.) Allowing this change could potentially decimate local bar revenues and thereby preventing us from providing the other important services we provide to the public, e.g. free legal clinics, and to the legal Community, e.g. MCLE	Notwithstanding any reforms to permit ABS or fee sharing, a lawyer would remain bound by the duty of competence, the duty to supervise nonlawyers and the conflicts of interest restrictions. Proactive risk-based regulation of nonlawyer providers that relies on auditing and monitoring rather than complaint-driven enforcement would seek to minimize or prevent consumer harm. In other jurisdictions, regulatory restraints are used to avoid impairing client protection. As examples, this includes requirements for lawyer majority ownership of law practices (ABS in Italy) and fitness to own scrutiny for nonlawyers (in the U.K.). It is not clear how any reforms would impact local bar revenues as none of the reforms would create an attorney associational organization that would compete with local bars for membership.
Why doesn't the State Bar institute a mandatory pro bono requirement. That would seem much more efficient and effective at increasing access to competent legal advice. Regarding the argument that a non-profit does not have the problem of prioritizing profit over access to legal services for those in need, some of the	The Task Force was given a specific charge to study AI, technology and online delivery systems with dual goals of increased access to legal services and public protection. A list of other potential different initiatives (i.e., not technology-driven initiatives) will be compiled as an appendix to the Task Force's final report. This list will include mandatory pro bono.

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hospitals that make the most money are 'nonprofit,' but their patient care still suffers. The executives and 'higher-ups' are still making millions of dollars. Just because something is designated as a 'non-profit' does not mean that it does not take advantage of people while reaping huge rewards.	
It is a fallacy to think non-lawyers will act with the same ethical and professional considerations that lawyers must adhere to because they won't know what those considerations are. There are issues of liability and accountability that will fall by the wayside if non-lawyers are allowed to practice law. The fact is that non-lawyers won't know what the unknown unknowns are. This will not improve access to qualified law providers but will allow unqualified providers to flood the market and undercut qualified attorneys.	Proactive risk-based regulation of the competence of nonlawyer providers that relies on auditing and monitoring rather than complaint-driven enforcement may mitigate or prevent consumer harm. This is new and untested in California and implementation methods such as a regulatory sandbox could generate empirical data to assess the risks and benefits of any reforms. Where about 70% of all Californians are not receiving legal services to address a civil justice legal problem, the public is not being adequately protected. The Task Force's ABS reform concepts seek to increase access. For example, one change to current law might be to relax UPL prohibitions to allow regulated entities to develop new delivery systems. The goal would be to facilitate the ability of lawyers to enter into financial arrangements with nonlawyers to develop or administer cutting-edge legal technology or innovative delivery systems. The task force was informed from discussions with legal technologists on the task force and otherwise, that a primary impediment to such arrangements is the inability of lawyers to share with nonlawyers any portion of the legal fees paid by clients.
The proposed corporate takeover will wipe out small, loyal firms and their employees. They would be replaced with non-lawyer corporate businesses who have no	Notwithstanding any reforms to permit ABS or fee sharing, a lawyer would remain bound by the duty of competence, the duty to supervise nonlawyers and the conflicts of interest restrictions. Proactive risk-based

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knowledge or experience with our laws or court systems, but more importantly, have no connection or concern for those that matter most – the clients.	regulation of nonlawyer providers that relies on auditing and monitoring rather than complaint-driven enforcement would seek to minimize or prevent consumer harm. In other jurisdictions, regulatory restraints are used to avoid impairing client protection. As examples, this includes requirements for lawyer majority ownership of law practices (ABS in Italy) and fitness to own scrutiny for nonlawyers (in the U.K.).